

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D. 04 NOV 2004

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Applicant's or agent's file reference 5684.4.WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US03/29852	International filing date (day/month/year) 22 September 2003 (22.09.2003)	Priority date (day/month/year) 10 October 2002 (10.10.2002)
International Patent Classification (IPC) or national classification and IPC IPC(7): C12P 21/06; C07H 21/04; A61K 38/00 and US Cl.: 435/69.1, 320.1; 536/23.1; 514/12		
Applicant MOLICHEM MEDICINES, INC.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of ___ sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☒ Non-establishment of report with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☒ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 26 April 2004 (26.04.2004)	Date of completion of this report 14 October 2004 (14.10.2004)
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer Anand Desai Telephone No. (571)272-0947

Form PCT/IPEA/409 (cover sheet)(July 1998)

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International Application No.

PCT/US03/29852

I. Basis of the report**1. With regard to the elements of the international application:***

- ☒ the international application as originally filed.
- ☒ the description:
pages 1-17 as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.
- ☒ the claims:
pages 18 and 19, as originally filed
pages NONE, as amended (together with any statement) under Article 19
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.
- ☒ the drawings:
pages 1 and 2, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.
- ☒ the sequence listing part of the description:
pages 1-6, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☒ contained in the international application in printed form.
- ☒ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The question whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 1, 2, in part, 3, and 4.

because:

- ☐ the said international application, or the said claim Nos. _____ relate to the following subject matter which does not require international preliminary examination (*specify*):

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____ are so unclear that no meaningful opinion could be formed (*specify*):

- ☒ the claims, or said claims Nos. 1, 2, in part, 3, and 4. are so inadequately supported by the description that no meaningful opinion could be formed.
☒ no international search report has been established for said claims Nos. 1, 2, in part, 3, and 4.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

- ☒ the written form has not been furnished or does not comply with the standard.
☒ the computer readable form has not been furnished or does not comply with the standard.

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V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)

Claims 1, 2, and 5-14 YES
Claims NONE NO

Inventive Step (IS)

Claims 1, 2, and 5-14 YES
Claims NONE NO

Industrial Applicability (IA)

Claims 1, 2, and 5-14 YES
Claims NONE NO

2. CITATIONS AND EXPLANATIONS

Claims 1, 2, in part, and 5-14 have novelty under PCT Article 33(2), because the prior art does not teach the claimed preduramycin or produramycin nucleic acid sequence.

Claims 1, 2, in part and 5-14 has an inventive step under PCT Article 33(3), because the prior art does not teach the claimed preduramycin or produramycin nucleic acid sequence. The structure disclosed by Hayashi, F. et al. is not the preduramycin or produramycin nucleic acid sequence currently being claimed.

Claims 1, 2, in part, and 5-14 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry. Duramycin is an antibiotic.

----- NEW CITATIONS -----

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VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

Claims 1, 2, in part, 3, and 4 are drawn to SEQ ID NO: 2 and 4 were not searched because there was a discrepancy between the computer readable form and the paper copy of the sequence submission.